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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,394	01/31/2001	Lars Wiklund	P/2432-37	5538

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EXAMINER
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BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/773,394

Applicant(s)

WIKLUND ET AL.

Examiner

Mojdeh Bahar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/19/2002 has been entered.

Applicant's remarks and amendment submitted 08/19/02 is persuasive to remove the rejection under 35 USC 112 in the previous office action.

### ***Claim Objections***

Claims 16-17 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Note that claims 16-17 depend from claim 15, which recites an "infusion". Therefore the recitation of an "infusion carrier" or an "oral carrier" in claims 16 and 17 respectively do not further limit claim 15.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or non-obviousness.

Claims 1-2, 4-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Veech (USPN 5,719,119) and Vinnars (USPN 5,310,768).

Veech (USPN 5,719,119) teaches a parenteral nutrition solution comprising alpha-ketoglutarate and ammonium, see Table 9, col.20, examples 1.4-1.5. Veech also teaches the employment of the parenteral nutrition solution in a method of normalizing muscle and organ function, see claim 5 for example. Veech further teaches that post-traumatic or post-operative patients suffer from a negative nitrogen balance, col.7, line 55 to column 8 line 7. Veech also teaches alpha ketoglutarate and ammonium in an amino acid solution containing glutamate which can control the redox state of the mitochondria and therefore be useful in nitrogen-containing pharmaceutical compositions, see col. 13 line 5 to col. 14 line 20.

Vinnars (USPN 5,310,768) teaches a method of treatment of post operative and posttraumatic patients for improving glutamine content in skeletal muscle and preventing the reduction of protein synthesis capacity, hence also, improve the nitrogen balance and even make it positive by administering alpha-ketoglutarate, alone or in combination with other actives, see col. 2, lines 54-63 and abstract in particular. Vinnars teaches that the amount of alpha-

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ketoglutarate is at least 0.1g/kg body weight/day (which amounts to 312.5 micromoles/kg body weight per day), see col. 3, lines 6-12.

Veech and Vinnars do not particularly teach the dosing regimen herein in terms of micromoles per kilogram per minute. Neither does it particularly teach the employment of a particular salt of ammonium.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a composition consisting essentially of alpha-ketoglutarate and an ammonium salt in the doses herein in a method of preserving bodily protein in catabolic patients.

One of ordinary skill in the art would have been motivated to employ a composition consisting essentially of alpha-ketoglutarate and an ammonium salt in the doses herein in a method of preserving bodily protein in catabolic patients because both alpha-ketoglutarate and ammonium are known to be useful in methods of treating post-operative/post-traumatic patients and normalizing/preserving skeletal muscle glutamine/nitrogen content. Combining two agents which are known to be useful to improve nitrogen balance and preserve skeletal muscle individually into a single composition useful for the very same purpose is prima facie obvious. See *In re Kerkhoven* 205 USPQ 1069. The employment of salts of known actives is within the skill of the Skilled Artisan and is therefore obvious. Optimization of amounts is within the skill of the artisan and is therefore obvious, absent evidence to the contrary.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

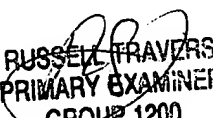
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from 8:30 a.m. to 6:30 p.m. Monday, Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar  
Patent Examiner  
October 29, 2002

  
RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200